



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

August 30, 1991

Ms. Jo Wiginton  
Assistant City Attorney  
P. O. Box 1562  
Houston, Texas 77251-1562

OR91-395

Dear Ms. Wiginton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12579.

The city of Houston received a written request for information pertaining to several complaints filed against five named officers of the Houston Police Department that were sustained by the department. You claim the requested information is excepted by section 3(a)(3) of the Open Records Act, which applies to

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

V.T.C.S. art. 6252-17a, § 3(a)(3).

For information to be excepted by section 3(a)(3), two things must be shown. First, it must be established that litigation is pending or reasonably anticipated. Second, it must be demonstrated that the requested information relates to the anticipated litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Under this test, our review is directed to the relation of the subject matter of the requested information to the pending or anticipated litigation, not its relation to the litigation strategy of the attorney

representing the governmental body. Open Records Decision No. 551 (1990). Where the attorney for the governmental body determines that the information relates to pending or anticipated litigation, this office's review will be confined to ascertaining whether that determination is reasonable in light of the facts. *Id.*

You have not shown that specific litigation to which the city or state is a party is pending or reasonably anticipated or that the requested information relates to any such litigation. However, in her letter to the city, the requestor discloses that the requested information relates to a pending criminal case in which she is representing the defendant. In light of this disclosure, your conclusion that the information is excepted by section 3(a)(3) was not unreasonable. Accordingly, the city may withhold the documents pursuant to section 3(a)(3) at this time. We would add that for purposes of section 3(a)(3), the state is considered to be a party to criminal litigation until the applicable statute of limitations has expired or until the defendant has exhausted all appellate and postconviction remedies in state or federal court. V.T.C.S. art. 6252-17a, § 3(e).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-395.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Aragon", followed by a small flourish or mark.

Steve Aragon

Assistant Attorney General  
Opinion Committee

SA/mc

Ref.: ID# 12579